

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TELEPHONE (212) 973-0111
FACSIMILE (212) 891-9598

August 31, 2004

VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

Re: DTE 04-33

Dear Ms. Cottrell:

ACN Communications Services, Inc.; CTC Communications Corp.; DSLnet Communications, LLC; Focal Communications Corporation of Massachusetts; Lightship Telecom, LLC; LightWave Communications Inc.; and PAETEC Communications, Inc. ("CLECs"), by their attorneys, respectfully respond to the Department's request for comments regarding Verizon Massachusetts' ("Verizon") Notice of Withdrawal of Petition for Arbitration as to Certain Parties that was filed on August 20, 2004 in the above-referenced docket.

CLECs reiterate that Verizon may not unilaterally terminate a UNE, by notice letter or otherwise, in instances where Verizon and a CLEC disagree as to whether an unbundling obligation remains. Any disputes regarding Verizon's obligations under the interconnection agreements would first need to be resolved through the dispute resolution process set forth in the agreements before Verizon discontinues any UNE offerings. Significantly, Verizon even makes this point in its Notice and further explains that "if a CLEC disagrees with Verizon MA's implementation of an FCC or judicial ruling under an agreement, the CLEC may be permitted under the terms of the agreement to bring a complaint to the Department or other appropriate decision-maker for resolution."¹

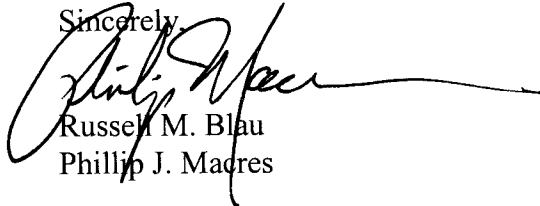
CLECs are not opposed to Verizon's Notice because CLECs have always believed that this arbitration was premature. CLECs believe the Department's treatment of Verizon's Notice should be consistent with the August 25, 2004 Hearing Officer's Order in the Vermont arbitration proceeding regarding Verizon Vermont's Notice of Withdrawal.² In that decision, the

¹ Verizon Notice at 2.

² See *Petition of Verizon, New England Inc., d/b/a Verizon Vermont, for arbitration of an amendment to interconnection agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service*

Hearing Officer (1) took "no position" on the merits of Verizon's claims regarding the interpretation of the interconnection agreements; (2) noted that "if Verizon seeks to unilaterally modify its obligations under an existing interconnection agreement based upon its view of the requirements of that agreement, the other party may ask the Board for relief, at which time the Board will address the issue"; (3) held that "as to those parties that raised additional issues for arbitration in their responses, the Board should continue to arbitrate those issues"; and (4) permitted carriers, which Verizon withdrew its arbitration petition against, to participate in the proceeding to a limited extent because the case could require Board rulings on policy issues that could affect the interpretation of Verizon's obligation under the interconnection agreements that Verizon no longer seeks to modify.

An original and nine (9) copies of this filing are attached. Please date-stamp the enclosed extra copy of this filing and return it in the attached self-addressed, postage prepaid envelope provided. Please note that this filing is also being filed in electronic format by e-mail attachment to dte.efiling@state.ma.us.

Sincerely,

Russell M. Blau
Phillip J. Macres

Counsel for ACN Communications Services,
Inc.; CTC Communications Corp.; DSLnet
Communications, LLC; Focal Communications
Corporation of Massachusetts; Lightship Tele-
com, LLC; LightWave Communications Inc.;
and PAETEC Communications, Inc.

cc: Tina W. Chin, Hearing Officer (via e-mail and overnight delivery)
DTE 04-33 Service List (via e-mail and U.S. Mail)

Providers in Vermont, Pursuant to Section 252 of the Communications Act of 1934, as amended, and Triennial Review Order, Docket No. 6932, Hearing Officer's Order Re: Verizon Motion of Withdrawal, at 3 (rel. Aug. 25, 2004) (attached as Exhibit A).

EXHIBIT A

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6932

Petition of Verizon New England Inc., d/b/a)
Verizon Vermont, for arbitration of an)
amendment to interconnection agreements with)
Competitive Local Exchange Carriers and)
Commercial Mobile Radio service providers in)
Vermont, pursuant to Section 252 of the)
Communications Act of 1934, as amended, and)
the Triennial Review Order)

Order entered: 8/25/2004

ORDER RE: VERIZON MOTION OF WITHDRAWAL

I. INTRODUCTION

This Docket concerns a petition filed by Verizon New England Inc., d/b/a Verizon Vermont ("Verizon") in which Verizon requests that the Board arbitrate a proposed modification to its interconnection agreements with certain named telecommunications carriers. On July 22, 2004, Verizon filed a Notice of Withdrawal of Petition for Arbitration as to Certain Parties. In its Notice, Verizon stated that it was withdrawing its petition as to all but eleven carriers that are identified in the Notice.¹

In this Order, I grant Verizon's withdrawal, subject to certain conditions. To the extent that Verizon originally sought to modify the interconnection agreements of the unlisted carriers, Verizon may withdraw its request to modify the agreements. However, any of the unlisted carriers that have, in this Docket, requested amendments to their interconnection agreements with

1. The interconnections that Verizon still seeks to amend are for the following carriers: ACC National Telecom Corp., AT&T Communications of New England, Inc., AT&T Wireless Services, Inc., CTC Communications Corp., Devon Mobile Communications L.P., International Telcom Ltd., MCImetro Access Transmission Services LLC, Paetec Communications Inc., RCN Operating Services, Inc., Sprint Communications Company L.P., and US WEST Enterprise America Inc., d/b/a INTERPRISE America. The remaining carriers — i.e., those for whom Verizon wishes to withdraw its arbitration request — are referred to in this Order as the "unlisted" carriers.

Verizon may continue to pursue those claims. In addition, because this Docket could require Board rulings on policy issues that will affect the interpretation of Verizon's obligations under the interconnection agreements that Verizon no longer seeks to modify, I will permit the unlisted carriers to continue to participate in this Docket.

II. POSITIONS OF THE PARTIES

Under its Notice, Verizon still seeks to amend the interconnection agreements for eleven named telecommunications service providers. However, Verizon states that it has concluded that the interconnection agreements for the unlisted carriers "contain specific terms permitting Verizon VT, upon specified notice, to cease providing unbundled network elements ("UNEs") that are no longer subject to an unbundling obligation under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51." Thus, states Verizon, amendment to those interconnection agreements is unnecessary.

The Competitive Carrier Group² ("CCG") opposes Verizon's notice arguing that the Board should reject Verizon's effort to "unilaterally and unlawfully remove parties from this Arbitration." CCG argues that Verizon may not unilaterally determine the parties' rights under each interconnection agreement and the Federal Communication Commission's *Triennial Review Order*.³ According to CCG, the Public Service Board ("Board"), rather than Verizon, should be making this interpretation. CCG also asserts that Verizon has failed to show that any of the interconnection agreements would permit Verizon to unilaterally discontinue the offering of UNEs. Furthermore, CCG maintains that, to the extent that Verizon could have excluded certain carriers from the arbitration, Verizon had waived such a claim. In addition, CCG argues that Verizon's petition for arbitration eliminated the need for carriers to bring their own petitions, so that it would be inequitable to dismiss these parties. Finally, CCG states that the arbitration includes not only Verizon's issues, but also the claims by other parties to interconnection

2. A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, Equal Access Networks LLC, IDT America Corporation, KMC Telecom V Inc., XO Communications, Inc., and XO Long Distance Services, Inc.

3. Report and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (generally referred to as the "*Triennial Review Order*"), vacated in part and remanded, *United States Telecom Association v. FCC* 359 F.3d 554 (D.C.Cir. 2004) ("*USTA II*").

agreements that those agreements need to be modified to impose additional obligations on Verizon.

In response, Verizon asserts that CCG's arguments are without merit. First, Verizon argues that its reasoning for withdrawing the proposed amendments with respect to most parties — Verizon's determination that such an amendment is not needed — is not before the Hearing Officer at the present time. Verizon maintains that it is not necessary to determine that its interpretation is correct in order to permit it to withdraw its arbitration request. Verizon also maintains that the Board can and should grant the requested relief even though some parties have proposed new contract language. According to Verizon, the filing of this new language in the form of a response to the arbitration petition is not sufficient; instead, each party should have filed its own arbitration petition.

III. DISCUSSION

I conclude that Verizon may withdraw its Petition for Arbitration as it relates to the unlisted carriers, subject to two limitations explained below. Verizon initiated this proceeding seeking to modify those interconnection agreements (as well as the remaining eleven agreements) to incorporate changes that Verizon maintains are required by the *Triennial Review Order*. If Verizon no longer desires such a change to some of the agreements, for whatever reason, this Board no longer has any party advocating revisions to those agreements on the issues raised by Verizon. Parties may (and apparently do) differ as to the meaning of the language in the existing agreements, but the purpose of this proceeding is not to interpret existing agreements. Rather, the Board opened this Docket to arbitrate, under Section 252(b) of the federal Telecommunications Act of 1996 (the "Act"), proposed amendments to the interconnection agreements. With Verizon's decision to no longer seek changes to certain agreements, it is appropriate to allow Verizon to withdraw its petition to modify the interconnection agreements with the unlisted carriers.

I am not persuaded by CCG's argument that I must reject Verizon's notice of withdrawal and consider whether Verizon can change unbundling and interconnection requirements under the existing terms and conditions of the "unlisted" agreements. By allowing Verizon to

withdraw, I take no position on the merits of Verizon's claims that the interconnection agreements are self-executing and that Verizon may make modifications to interconnection terms and conditions (including the terms and conditions for UNEs) without actually changing the agreements. The purpose of this proceeding is to arbitrate proposed changes to interconnection agreements, not to interpret language in existing agreements to which no party seeks changes. Accordingly, CCG's comments provide no basis for denying Verizon's withdrawal request. I note that if Verizon seeks to unilaterally modify its obligations under an existing interconnection agreement based upon its view of the requirements of that agreement, the other party may ask the Board for relief, at which time the Board will address the issue.

I also do not accept CCG's claim that Verizon, by bringing this petition, has waived its right to argue that the agreement is self-executing and was intended to prospectively incorporate federal law. CCG has cited no case law to support its argument, nor has it shown why Verizon should be obligated to arbitrate a change to an interconnection agreement that it no longer seeks. CCG also has not shown that Verizon's withdrawal is somehow unfair to the companies that comprise CCG.

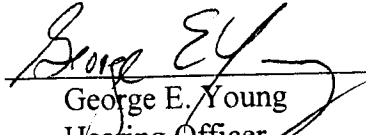
As stated above, I place two limitations upon my decision to permit Verizon to withdraw its petition as to certain parties. First, this Docket now includes not only the specific issues presented in Verizon's petition. In their responses to Verizon's arbitration petition (under Section 252(b)(3)), several parties have raised additional issues that have been unresolved after negotiations. These parties requested that the Board arbitrate these issues — which they assert include clarifications to Verizon's existing obligations — and direct the parties to modify the interconnection agreements to reflect these duties. Verizon maintains that by withdrawing its petition as to the "unlisted" parties, these issues are no longer present. I do not agree. Section 252(b) contemplates that the party that does not request arbitration may raise additional issues in its response. Moreover, subsection (b)(4)(C) of that section specifically states that the Board "shall resolve each issue set forth in the petition *and the response* . . ." (Emphasis added.) This makes clear that, as to those parties that raised additional issues for arbitration in their responses,

the Board should continue to arbitrate those issues. Verizon's withdrawal may remove the issues for which Verizon sought arbitration; it does not eliminate the issues raised in response.⁴

Second, I recognize that in the Board's arbitration of the remaining eleven interconnection agreements, the Board may need to interpret the *Triennial Review Order* and further define Verizon's interconnection and unbundling obligations based upon that Order. These interpretations of Verizon's responsibilities under Sections 251 and 252 of the Act and the Board's determination of any additional Verizon obligations under state law, other provisions of federal law, or through commitments made in other contexts, may affect Verizon's ability to change the price and availability of UNEs even under the "unlisted" agreements. In a multi-party arbitration such as that before the Board in this Docket, it is reasonable to allow these parties to continue to offer comments concerning Verizon's legal obligations. Accordingly, while I grant Verizon's motion, I will permit the unlisted carriers to remain parties.⁵

SO ORDERED.

Dated at Montpelier, Vermont, this 25th day of August, 2004.


George E. Young
Hearing Officer

OFFICE OF THE CLERK

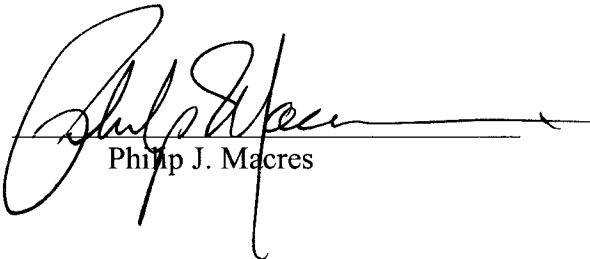
FILED: August 25, 2004
ATTEST: Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

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4. Obviously, this ruling only affects the unlisted carriers that did raise additional issues in their responses.
 5. At this time, I do not limit the scope of their participation. I do expect that their participation, if any, will be limited to the general policy and legal questions rather than the language of a specific interconnection agreement that relates only to the two parties to that agreement and does not touch on the broader obligations.

CERTIFICATE OF SERVICE

I certify that on this 31st day of August, 2004, copies of the foregoing letter were sent via postage prepaid first class mail and electronic mail to the Active Party Service List associated with Case No. 04-33.



Philip J. Macres

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England, Inc. d/b/a)
 Verizon Massachusetts for Arbitration of)
 Interconnection Agreements with Competitive)
 Local Exchange Carriers and Commercial) D.T.E. 04-33
 Mobile Radio Service Providers in Massachusetts)
 Pursuant to Section 252 of the Communications)
 Act of 1934, as amended, and the)
Triennial Review Order)

SERVICE LIST
(As of August 31, 2004)

Mary Cottrell, Secretary (via Overnight Delivery)
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3500
fax: (617) 345-9101
email: mary.cottrell@state.ma.us

Tina W. Chin, Hearing Officer
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3578
fax: (617) 345-9103
email: Tina.Chin@state.ma.us

Michael Isenberg, Director, Telecommunications Division
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3744
fax: (617) 478-2588
email: Mike.Isenberg@state.ma.us

April Mulqueen, Assistant Director, Telecommunications Division
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3748
fax: (617) 478-2588
email: April.Mulqueen@state.ma.us

Paula Foley, Assistant General Counsel
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3608
fax: (617) 345-9103
email: Paula.Foley@state.ma.us

Berhane Adhanom, Analyst, Telecommunications Division
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3740
fax: (617) 478-2588
email: Berhane.Adhanom@state.ma.us

Peter Allen, Analyst, Telecommunications Division
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3741
fax: (617) 478-2588
email: Peter.Allen@state.ma.us

Debra Conklin, Analyst, Telecommunications Division
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3749
fax: (617) 478-2588
email: Debra.Conklin@state.ma.us

Ashish Shrestha, Analyst, Telecommunications Division
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3743
fax: (617) 478-2588
email: Ashish.Shrestha@state.ma.us

Karlen J. Reed
Assistant Attorney General, Utilities Division
Office of the Attorney General
200 Portland Street, 4th Floor
Boston, MA 02114
phone: (617) 727-2200 ext. 3436
fax: (617) 727-1047
email: Karlen.Reed@ago.state.ma.us

Bruce P. Beausejour (via Overnight Delivery)
Barbara Anne Sousa
Ellen M. Cummings
Verizon New England, Inc. d/b/a Verizon Massachusetts
185 Franklin Street, 13th Floor
Boston, MA 02110-1585
phone: (617) 743-7331
fax: (617) 737-0648
email: Bruce.P.Beausejour@verizon.com; Barbara.A.Sousa@verizon.com;
Ellen.M.Cummings@verizon.com

Jay E. Gruber
Harry Davidow
Michelle Consalvo
AT&T Communications of New England, Inc.
99 Bedford Street, 4th Floor
Boston, MA 02111
phone: (617) 574-3149
fax: (617) 574-3274
email: jegruber@lga.att.com
mconsalvo@lga.att.com

and

Kenneth W. Salinger
Ruth T. Dowling
Palmer and Dodge LLP
111 Huntington Avenue
Boston, MA 02199
phone: (617) 239-0657
fax: (617) 227-4420
email: ksalinger@palmerdodge.com; rdowling@palmerdodge.com
FOR: AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

Richard C. Fipphen, Senior Counsel
Law and Public Policy, New York/New England Region
MCI, Inc.
200 Park Avenue, 6th Floor
New York, NY 10166
phone: (212) 547-2602
fax: (212) 478-9202
email: richard.fipphen@mci.com
FOR: MCIMETRO ACCESS TRANSMISSION SERVICES LLC, BROOKS FIBER
COMMUNICATIONS OF MASSACHUSETTS, INC., MCI WORLDCOM
COMMUNICATIONS, INC., MCI WORLDCOM COMMUNICATIONS, INC.
AS SUCCESSOR TO RHYTHMS LINKS, INC., AND INTERMEDIA
COMMUNICATIONS

Craig D. Dingwall
Director, State Regulatory
Sprint Communications Company L.P.
401 9th Street, NW, Suite 400
Washington, DC 20004
phone: (202) 585-1936
fax: (202) 585-1984
email: craig.d.dingwall@mail.sprint.com

Harisha J. Bastiampillai
Russell M. Blau
Michael W. Fleming
Philip J. Macres
Swidler Berlin Shereff Friedman, LLP
The Washington Harbour
3000 K Street, NW, Suite 300
Washington, DC 20007-5116
phone: (202) 424-7869
fax: (202) 424-7643
email: hjbastiampillai@swidlaw.com; rmbblau@swidlaw.com; mwfleming@swidlaw.com;
pjmacres@swidlaw.com

FOR: ALLEGIANCE TELECOM OF MASSACHUSETTS, INC.; ACN
COMMUNICATIONS SERVICES, INC.; ADELPHIA BUSINESS SOLUTIONS
OPERATIONS, INC. D/B/A TELCOVE; CORECOMM MASSACHUSETTS, INC.;
CTC COMMUNICATIONS CORP.; DSLNET COMMUNICATIONS, LLC;
FOCAL COMMUNICATIONS CORPORATION OF MASSACHUSETTS; ICG
TELECOM GROUP, INC.; LEVEL 3 COMMUNICATIONS, LLC; LIGHTSHIP
TELECOM, LLC; LIGHTWAVE COMMUNICATIONS, INC.; PAETEC
COMMUNICATIONS, INC.; RCN-BECOCOM, LLC; & RCN TELECOM
SERVICES OF MASSACHUSETTS, INC.

Genevieve Morelli
Erin Weber Emmott
Andrew M. Klein
Michael B. Hazzard
Heather T. Hendrickson
Kelly Drye & Warren LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
phone: (202) 955-9600
fax: (202) 955-9792
email: gmorelli@kelleydrye.com; eemmott@kelleydrye.com; mhazzard@kelleydrye.com;
hhendrickson@kelleydrye.com

FOR: A.R.C. NETWORKS INC.; BROADVIEW NETWORKS INC. AND BROADVIEW
NP ACQUISITION CORP.; BULLSEYE TELECOM INC.; CHOICE ONE
COMMUNICATIONS OF MASSACHUSETTS INC.; COMCAST PHONE OF
MASSACHUSETTS INC.; DIECA COMMUNICATIONS, INC. D/B/A COVAD
COMMUNICATIONS COMPANY; DSCI CORPORATION; EQUAL ACCESS
NETWORK LLC; ESSEX ACQUISITION CORP.; GLOBAL CROSSING LOCAL
SERVICES INC.; IDT AMERICA CORP.; KMC TELECOM V INC.;
SPECTROTEL INC.; TALK AMERICA INC.; WINSTAR COMMUNICATIONS
LLC; AND XO COMMUNICATIONS, INC.

Thomas M. Koutsky
Vice President, Law and Public Policy
Z-Tel Communications, Inc.
1200 19th Street, NW, Suite 500
Washington DC 20036
phone: (202) 955-9652
email: tkoutsky@z-tel.com

Douglas S. Denny-Brown
General Counsel
RNK Inc. d/b/a RNK Telecom
333 Elm Street, Suite 310
Dedham, MA 02026
phone: (781) 297-9831
fax: (781) 297-9836
e-mail: dougdb@rnktel.com

E. Barlow Keener
BrahmaCom, Inc.
32 Wexford Street
Needham, MA 02494
phone: (781) 433-0333 x026
email: bkeener@brahmacom.com

Scott Sawyer
Vice President of Regulatory Affairs & Counsel
Conversent Communications of Massachusetts, LLC
222 Richmond Street, Suite 301
Providence, RI 02903
phone: (401) 490-6377
email: ssawyer@conversent.com

Douglas A. Van Winkle
Regulatory/Contracts Administration Specialist
NEON Communications, Inc.
2200 West Park Drive
Westborough, MA 01571
phone: (508) 621-1727
fax: (508) 616-7895
email: dvanwinkle@neoninc.com

Michael S. Giaimo
Robinson & Cole LLP
One Boston Place
Boston, MA 02108-4404
phone: (617) 557-5959
fax: (617) 557-5999
email: mgiaimo@rc.com

FOR: CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS AND IS AFFILIATES
PITTSFIELD CELLULAR TELEPHONE COMPANY, AND AIRTOUCH
PAGING D/B/A VERIZON WIRELESS MESSAGING SERVICES

Steven D. Strickland
General Counsel
SBC Telecom, Inc.
1010 N. St. Mary's St. #14J
San Antonio, TX 78215

Kristin L. Smith
Senior Attorney - Regulatory
Qwest Communications Corp.
1801 California Street, Suite 4700
Denver, CO 80202
phone: (303) 896-8143
fax: (303) 896-9994
email: kristin.smith@qwest.com

Lance JM Steinhart
Law Office of Lance JM Steinhart, PC
1720 Windward Concourse, Suite 250
Alpharetta, Georgia 30005
phone: (770) 232-9200
fax: (770) 232-9208
email: lsteinhart@telecomcounsel.com

FOR: BUDGET PHONE, INC.; COVISTA, INC.; MCGRAW COMMUNICATIONS,
INC.; WORLDXCHANGE CORPORATION D/B/A ACCERIS
COMMUNICATIONS SOLUTIONS D/B/A ACCERIS COMMUNICATIONS
PARTNERS ACCERIS LOCAL COMMUNICATIONS; NUI TELECOM, INC.;
AND NEW HORIZONS COMMUNICATIONS CORPORATION

Jennifer Hassen
Freedom Ring Communications, LLC
359 Corporate Drive
Portsmouth, NH 03801
phone: (603) 766-1000

fax: (603) 766-1050
email: jennifer@bayring.com

Christa M. Proper, Vice President
Richmond Connections Inc. d/b/a Richmond NetWorx
124 Fenn Street
Pittsfield, MA 01201
phone: (413) 447-3787
fax: (413) 445-4654
email: cproper@rnetworx.com

- and-

John B. Adams
The Adams Legal Firm, LLC
Suite C-312
626 Admiral Drive
Annapolis, MD 21401
phone: (202) 448-9033
fax: (202) 448-9040
email: adamslegal@comcast.net

Andoni Economou
Leo Maese
Metropolitan Telecommunications of Massachusetts, Inc.
44 Wall Street, 6th Floor
New York, NY 10005
phone: (212) 607-2004/(212) 607-2148
fax: (212) 635-5074
email: aeconomou@mettel.net; lmaese@mettel.net

Jodi J. Caro
Vice President and General Counsel
Looking Glass Networks, Inc.
111 West 22nd Street, Suite 600
Oak Brook, IL 60523
phone: (630) 242-2015
fax: (630) 242-2001
email: jodi.caro@lglass.net

James R.J. Schetema
Director - Regulatory Affairs
Global NAPs, Inc.
5042 Durham Road West

Columbia, MD 21044-1445
phone: (617) 504-5513
fax: (617) 507-5713
email: jscheltema@gnaps.com
- and-

William J. Rooney, Fr.
Vice President and General Counsel
Global NAPs, Inc.
89 Access Road
Norwood, MA 02062
phone: (781) 551-9707
fax: (781) 551-9984
email: wrooney@gnaps.com

William E. Braun, VP & General Counsel
Dennis Kelley, Director of Operations
1-800-Reconex
2500 Industrial Drive
Hubbard, OR 97032
phone: (503) 982-5573/(503) 982-5578
fax: (503) 982-6077
email: bill.braun@reconex.com; dennies.kelley@reconex.com

Patricia Gray, SVP, General Counsel and General Secretary
Michael Curd, VP, Technical Services
Arch Wireless Operating Company, Inc.
1800 West Park Drive, Suite 250
Westborough, MA 01581
phone: (508) 870-8853/(508) 870-6027
fax: (508) 870-6670/(866) 223-0894
email: pat.gray@arch.com; mike.curd@arch.com

Ken Duarte
Director of Carrier Relations and Regulatory Affairs
Volo Communications of Massachusetts, Inc.
151 S. Wymore Road., Suite 3000
Altamonte Springs, FL 32714-4254
phone: (407) 389-3232
fax: (407) 389-3233
email: kduarte@volocommunications.com

Chris Van de Verg
General Counsel

CoreTel Massachusetts, Inc.
209 West Street, Suite 302
Annapolis, MD 21401
phone: (410) 216-9865
fax: (410) 216-9867
email: chris@coretel.net

Kevin Photiades
Regulatory & Compliance Manager
United Systems Access Telecom, Inc.
5 Bragdon Lane, Suite 200
Kennebunk, ME 04043-7262
phone: (207) 774-6859
fax: (207) 467-8008
email: kevinp@usacsp.com

- and-

Eric J. Krathwohl
Rich May, PC
176 Federal Street
Boston, MA 02110-2223
phone: (617) 556-3857
fax: (617) 556-3890
email: ekrathwohl@richmaylaw.com
FOR: UNITED SYSTEMS ACCESS TELECOM, INC.